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OFFICE OF PETITIONS

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WASHINGTON DC 20001-4413

In re Application of
Martin Fischer et al.
Application No. 10/526,749
Filed: November 14, 2005
Attorney Docket No. 07781.0219-00

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: LETTER REGARDING
: PATENT TERM ADJUSTMENT
:

This letter is in response to the "NOTICE OF POSSIBLE PTO ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT AND REQUEST FOR REVIEW OF CALCULATION", filed October 26, 2009. Pursuant to their duty of good faith and candor to the Office, applicants note that the patent term adjustment pursuant to 35 U.S.C. 154(b) of 91 days indicated on the Determination of Patent Term Adjustment, PTOL-85, should be 62 days instead.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The PTA at the time of the mailing of the notice of allowance is 62 days.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is sixty-two (62) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On October 14, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 91 days. Applicants direct the office to the Information Disclosure Statement (IDS) and the Terminal Disclaimer filed October 7, 2009 and argue therefore that the time deducted for applicant delay pursuant to 37 CFR 1.704(c)(8) should have been a 62 day deduction for applicant delay.

A review of the record reveals that the initial determination of patent term adjustment of 91 days is incorrect.

After the filing on July 23, 2009 of a Request for Continued Examination, in response to a Final Office Action mailed May 6, 2009, an Information Disclosure Statement (IDS) and a Terminal Disclaimer were both filed October 7, 2009. The terminal disclaimer was incorrectly listed as having been filed on September 8, 2009. Thus, instead of a 47 day reduction for applicant delay pursuant to 37 C.F.R. §1.704(b), 76 days should have been accorded.

37 CFR 1.704(c)(8) provides that:

the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner,

after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

In this instance, the filing of the Information Disclosure Statement and the Terminal Disclaimer on October 7, 2009 is considered a failure to engage under 1.704(c)(8) as neither was expressly requested by the examiner nor did the IDS include a 1.704(d) statement.

The period of reduction pursuant to 37 CFR 1.704(c)(8) is 76 days, counting the number of days in the period beginning on the day after the initial reply was filed, July 23, 2009 and ending on the date of filing of the last supplemental paper, the IDS and Terminal Disclaimer filed October 7, 2009. Accordingly, a period of reduction of 76 days is being entered.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance is SIXTY-TWO (62) days (190 days of Office delay reduced by 128 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.
/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Examination Policy

Enclosure: Copy of Revised PALM Screen

PTA Calculations for Application: 10/526749

Application Filing Date:	11/14/2005	PTO Delay (PTO):	190
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	99
Post-Issue Petitions:	0	Total PTA (days):	62
PTO Delay Adjustment:	-29		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
110	02/28/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		29	
99	10/14/2009	MAIL NOTICE OF ALLOWANCE			
98	10/13/2009	ISSUE REVISION COMPLETED			
97	10/13/2009	DOCUMENT VERIFICATION			
96	10/13/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
95	10/13/2009	EXAMINER'S AMENDMENT COMMUNICATION			
94	10/13/2009	NOTICE OF ALLOWABILITY			
93	10/06/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
92	10/09/2009	PARALEGAL TD ACCEPTED			
91	09/08/2009	TERMINAL DISCLAIMER FILED		47	85
90	10/07/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
89	10/07/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
88	07/27/2009	DATE FORWARDED TO EXAMINER			
87	07/23/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
86	07/27/2009	DATE FORWARDED TO EXAMINER			
85	07/23/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
84	07/27/2009	DISPOSAL FOR A RCE / CPA / R129			
83	07/23/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
82	07/09/2009	MAIL ADVISORY ACTION (PTOL - 303)			
81	07/09/2009	ADVISORY ACTION (PTOL-303)			
80	07/07/2009	DATE FORWARDED TO EXAMINER			
79	07/06/2009	AMENDMENT AFTER FINAL REJECTION			

78	05/06/2009	MAIL FINAL REJECTION (PTOL - 326)			
77	05/05/2009	FINAL REJECTION			
76	12/24/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
75	03/11/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
74	03/11/2009	REFERENCE CAPTURE ON IDS			
73	03/11/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	70
72	03/11/2009	TERMINAL DISCLAIMER FILED			
71	03/13/2009	DATE FORWARDED TO EXAMINER			
70	03/11/2009	RESPONSE AFTER NON-FINAL ACTION			
69	03/11/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
68	12/24/2008	REFERENCE CAPTURE ON IDS			
67	12/24/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	12/24/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
65	12/23/2008	MAIL NON-FINAL REJECTION			
64	12/22/2008	NON-FINAL REJECTION			
63	10/02/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	10/02/2008	REFERENCE CAPTURE ON IDS			
61	10/02/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	57
60	10/10/2008	DATE FORWARDED TO EXAMINER			
59	10/02/2008	RCE- AF PROCESSED			
58	10/10/2008	DATE FORWARDED TO EXAMINER			
57	10/02/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		9	46
56	10/10/2008	DISPOSAL FOR A RCE / CPA / R129			
55	10/02/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
54	10/02/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
53	10/02/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
52	09/11/2008	MAIL ADVISORY ACTION (PTOL - 303)			
51	09/10/2008	ADVISORY ACTION (PTOL-303)			
50	09/03/2008	DATE FORWARDED TO EXAMINER			

49	08/25/2008	AMENDMENT AFTER FINAL REJECTION			
48	03/25/2008	REFERENCE CAPTURE ON IDS			
47	03/25/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	06/23/2008	MAIL FINAL REJECTION (PTOL - 326)			
45	06/20/2008	FINAL REJECTION			
44	05/14/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	03/25/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
42	05/14/2008	REFERENCE CAPTURE ON IDS			
41	05/14/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		43	37
40	05/14/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	05/08/2008	CORRESPONDENCE ADDRESS CHANGE			
38	05/03/2008	DATE FORWARDED TO EXAMINER			
37	04/01/2008	RESPONSE AFTER NON-FINAL ACTION			
36	03/25/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	01/07/2008	MAIL NON-FINAL REJECTION			
34	01/04/2008	NON-FINAL REJECTION			
33	12/13/2007	CASE DOCKETED TO EXAMINER IN GAU			
32	10/30/2007	PARALEGAL TD ACCEPTED			
31	10/23/2007	TERMINAL DISCLAIMER FILED		0	29
30	10/29/2007	DATE FORWARDED TO EXAMINER			
29	10/23/2007	RESPONSE AFTER NON-FINAL ACTION			
28	07/24/2007	CASE DOCKETED TO EXAMINER IN GAU			
27	07/23/2007	MAIL NON-FINAL REJECTION	190		7
26	07/20/2007	NON-FINAL REJECTION			
25	06/19/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	06/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	07/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
22	07/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	04/09/2007	CASE DOCKETED TO EXAMINER IN GAU			
18	11/28/2006	IFW TSS PROCESSING BY TECH CENTER			

		COMPLETE			
17	11/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
16	11/14/2005	REFERENCE CAPTURE ON IDS			
13	04/10/2006	CLEARED BY OIPE CSR			
12	04/10/2006	CLEARED BY OIPE CSR			
11	04/10/2006	CLEARED BY OIPE CSR			
10	04/10/2006	CLEARED BY OIPE CSR			
9	04/10/2006	CLEARED BY OIPE CSR			
8	04/10/2006	CLEARED BY OIPE CSR			
7	11/14/2005	371 COMPLETION DATE			
6	04/04/2006	APPLICATION DISPATCHED FROM OIPE			
5	04/04/2006	NOTICE OF DO/EO ACCEPTANCE MAILED			
4	11/14/2005	ADDITIONAL APPLICATION FILING FEES			
3	11/14/2005	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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